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In the Supreme Court of the United States

October Term, 1981

PANHANDLE EASTERN PIPE LINE COMPANY, ET AL.,
Petitioners,

vs.

MOBIL OIL CORPORATION, ET AL.,
Respondents.

NORTHERN NATURAL GAS COMPANY, ET AL.,
Petitioners,

vs.

MOBIL OIL CORPORATION, ET AL.,
Respondents.

CITIES SERVICE GAS COMPANY, ET AL.,
Petitioners,

vs.

MOBIL OIL CORPORATION, ET AL.,
Respondents.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF OF RESPONDENTS RALPH GROUNDS, ET AL. (LANDOWNER GROUP) IN OPPOSITION

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STATEMENT

Respondents, Ralph Grounds, et al., appearing individually and as representatives of class members collec-

tively referred to as landowner-lessors or the landowner group, have, themselves, filed a Petition for a Writ of Certiorari (No. 81-1919) to review the same judgment and opinion that is sought to be reviewed in these three certiorari proceedings.

In the view of Respondents, the three Petitions are sufficiently similar as to justify this single brief in opposition to all of them.

These landowner Respondents believe that the Statement of the Case contained in their own Petitions for Writ of Certiorari (No. 81-1919) is equally applicable to this Brief in Opposition. Additional discussion of the facts relating to the third-party beneficiary nature of the processing contracts between the Helex Group and the government arising out of the Helium Act Amendments of 1960 are set out below in connection with discussion of Petitioners' positions concerning the same.

PETITIONERS' REQUEST FOR REVIEW BASED UPON PROCEDURAL ERRORS ARE WITHOUT MERIT

These landowner Respondents themselves experienced the disconcerting effects of long delays below and of the shuffling back and forth of this *Consolidated Helium* or *Grounds* case below with related proceedings in the wholly separate and different *Ashland* case. Respondents are, consequently, sympathetic with Petitioners' feelings regarding such procedures, but, as we shall demonstrate, such procedural matters did not, in any way, prejudice the rights of the Helex Group—only the rights of landowners were sacrificed by the unprecedented procedure of the court below.

Actually, a careful reading of the three instant Petitions of the Helex Group reveals that Petitioners dwell on such procedural matters only to highlight and furnish a sympathetic background for their own argument dealing with the relationship between this case and the separate *Ashland* case. The Helex Group has seized upon and repeatedly emphasized the unfortunate and inapposite use by the court below of the phrase "law of the case" in order to obscure the applicable *stare decisis* effect of the *Ashland* decisions insofar as they apply to the "value less expense or work-back" valuation method directed by the court below to be used in this case on remand (App. p. A27) and, also, to obscure and conceal the fact that the Helex Group has already received full review of both law and fact questions on such issues by the court below in these instant separate *Consolidated Helium Cases*, sometimes referred to as the *Grounds* case.

It is undisputed that the interests of the Helex Group were fully represented throughout all of the proceedings in trial and on appeal in the *Ashland* case. The various opinions in the *Ashland* case themselves reveal that those who were actually present as parties to the *Ashland* trials and appeals, a lessee-producer and a processing helex company, were adverse litigants presenting an honest and antagonistic assertion of rights with respect to the questions sought to be raised in the three instant Petitions. The question remaining after the *Ashland* opinions was the extent to which the *Ashland* decisions and judgments had a *stare decisis* effect on these *Consolidated Helium Cases* insofar as they involved such issues so hotly disputed by adverse parties in *Ashland*. Consequently, at the beginning of its review of the record in these proceedings, the court below stated:

> "The record does not evidence any material significant differences between the contracts and contractual relationships existing between the parties involved in the Kansas and Oklahoma proceedings." (App. p. A12)

The court below then discussed the possible differences in evidence in the Kansas (*Consolidated Helium*) and Oklahoma (*Ashland*) cases relating to those issues. (App. pp. A12-14) Only after completing its review of these relevant differences as reflected by the records in both the *Ashland* case and in this *Consolidated Helium* case, did the court below state:

> "Accordingly, the work-back method *applies with full force in the case at bar.*" (App. p. A14, emphasis supplied)

Only then, after such full review, did the court below determine that the district court should, on remand, employ the "work-back" method set out in its opinions in *Ashland* as the proper method of determining the value of the processed helium. (App. p. A14) It is apparent that what the court below actually did is just what courts traditionally do in examining the *stare decisis* effect of a decision in a previous case when disposing of a subsequent case before them involving different facts, parties, and circumstances.

These landowner Respondents readily concede that technical "law of the case" was not applicable. The gratuitous, irrelevant, and careless references to the "law of the case" in the opinion below, even when made in the middle of an examination of the *stare decisis* effect of *Ashland* (App. p. A13), and even to the extent of discussing authority as to the applicability of "law of the case" (App. p. A14), merely obscure what the court actually did, as

is otherwise completely demonstrated by its opinion. It properly applied the rule of *stare decisis* to those issues now raised by Petitioners.

The petitioning members of the Helex Group have had a complete review in these cases as to the issues sought to be reviewed by them. They simply do not like the result. They have had their many days in both trial and appellate courts and are not able to point to any errors of law or fact in the review by the court of appeals sufficient to warrant the attention of this Court. Instead, they rely wholly upon the gratuitous and irrelevant references in the opinion below to the "law of the case" as sufficient to deserve this Court's attention.

This is in stark contrast with what happened below to these landowner Respondents. Neither law of the case, *stare decisis*, *res adjudicata* nor any other doctrine of judicial repose are applicable to the landowners' constitutional complaints relating to the reasonable royalty issue raised by these responding landowners in their own Petition in No. 81-1919. Unlike the full review accorded by the court below to the claims of the Helex Group, the landowner-lessor claims were held below to have been decided in the *Ashland* proceedings to which no landowner-lessors were ever parties or ever presented evidence and in which non-adversary proceedings the court below purported to construe its prior *Grounds I* decision as disposing of all royalty claims, although such claims were not, and could not have been, justiciable, thus making law-of-the-case, *stare decisis* or any other rule of judicial repose wholly inapplicable to avoid Article III and Fifth Amendment due process requirements of the Constitution. (See Petition in No. 81-1919, pp. 9-12, 19-23).

As we have indicated above, the court below fully reviewed the trial court's factual findings and legal con-

clusions as to all of the issues raised by the Helex Group in their Petitions here. (App. pp. A10-16, A17-24) In direct contrast to such fair treatment afforded to the Helex Group, the court below wholly ignored the extensive findings and conclusions made by the trial court (App. A118-119) upon the evidence adduced as to the reasonable royalty issues on the only occasions when the landowner-lessors were parties present and in a position to put on their evidence or argue justiciable issues. The oblique one-paragraph reference by the court below to the reasonable royalty issue (App. pp. A16-17) does not mention a single one of such findings of the trial court nor a single one of the trial court's conclusions based thereon. In the only setting first ripe for review of those issues, the findings of the trial court, the evidence on which they were based, and the trial court's conclusions on the issues were completely ignored as though such evidence, findings, and conclusions had never existed.

In contrast, the three instant Petitions of the Helex Group are nothing more than attempts to make it appear that the careless language and unusual procedures of the court below resulted in the same unfair treatment to them as was suffered by the landowner-lessors.

HELEX GROUP PETITIONERS ARE NOT AGGRIEVED BY THE $2.00 "FLOOR" OR MINIMUM PAYMENTS REQUIRED BY THE COURT BELOW BECAUSE THE MINIMUM SHOULD HAVE BEEN THE ULTIMATE $3.00 THIRD-PARTY BENEFICIARY AMOUNT SET FORTH IN THE WRITTEN CONTRACTS WITH THE GOVERNMENT

Petitioners are correct in pointing out that the approximate $2.00 per Mcf figures forming the basis for the minimum payment to third-party beneficiaries required by the court below is not mentioned in the helium processing contracts between the Helex Group and the government, but was used as a part of the cost build-up leading to the base per Mcf prices negotiated.

The $2.00 amount is, in each instance, however, money had and received by the processor for the benefit of third-parties. The $2.00 amount is not mentioned in the contract, however, because in the reduction to writing, the $2.00 became encompassed and subsumed into a larger ultimate $3.00 per Mcf third-party beneficiary amount to which the landowner-lessors and the lessee-producers are, in any event, entitled.

In making their attack on the $2.00 minimum, the Helex Group finds it necessary to suggest, contrary to fact, that they did not receive the $2.00 they bargained for and received as a part of the initial base price. Such initial base price has already been paid to them, and it includes the $2.00. The Petitioners also find it necessary to interlace their Petitions with a variety of bizarre and inaccurate statements at variance with the evidence in this case as it relates to the third-party beneficiary nature of their contracts with the government negotiated pursuant to the Helium Act Amendments of 1960, 74 Stat. 918, 50 U.S.C.

Sec. 167 *et seq.* (App. pp. A546-552), hereafter referred to as the Act.

We have in an Appendix to this Response particularized, for the Court's information, many of the statements contained in the three instant Petitions which are at variance with the facts as developed in the evidence and record below. The Appendix also contains a rather extensive recitation of undisputed facts at variance with the factual statements of the Petitioners, including an analysis of the Act and its legislative history and of the actual wording of the Helex contracts with the government, insofar as such matters relate to the arguments made by Petitioners.

As was properly noted by the court below, "the intent to benefit the third-party is generally controlling and it is to be gathered from a construction of the contract in the light of all surrounding circumstances showing such an obligation," citing cases in support thereof. (App. p. A18) There was an abundance of evidence of surrounding circumstances showing such intent. Indeed, the contracts are so clear as to such intent that no amount of extraneous evidence to the contrary (which does not exist) could possibly overcome the plain contractual language of intent. Third-party beneficiaries were actually referred to in the price provisions of the processing contracts, and the third-party beneficiary amount was clearly earmarked as such. The review of some of the evidence and facts set out in the Appendix to this Response demonstrates the compelling basis for such expressed intent.

In summary, the helium processor and the government, in each instance, entered into a single contractual arrangement providing for the removal of helium by the processor for delivery to the government and for a method of determining the identity and extent of outstanding third-

party interests in "all rights necessary or incident to the acquisition" of the helium to be removed and so delivered (*See* Article 3 of the Act, App. p. A542) and a method of assuring the government that such rights would ultimately be acquired and paid for by the helium processor itself, with assistance from the government under a price escalation clause contained in the contract.[1] Included in the contract was a definition of affiliates of the processor who might own interests in helium as lessee-producers or otherwise. This definition, as applied, excluded such affiliates, along with the contracting processor, from qualifying as third-party beneficiaries. The payments and other contractual considerations under the package agreement included all considerations for helium interests which the processor or such affiliates might possess or own and all compensation for the helium removal services to be performed by the processor. The contracting processors were, under the contracts, able to assure themselves of negotiated minimum revenues (regardless of the amounts required to be paid to third-parties for helium interests) together with other benefits, including the possibility of substantially reducing their costs through the incidental recovery of hydrocarbons liquified through the cold-temperature helium removal process. The basic process had been used many years by the government during the time of its helium monopoly. The process takes only a few seconds to perform and is wholly physical, rather than chemical, in nature.

While the value of the conservation helium involved has not yet been determined in this case in accordance

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1. As accurately pointed out by the court below, "[w]hen the United States and the Helex companies contracted they were fully aware that the 'postponed' knotty legal problems of title and accounting would, of certainty, confront them." (App. p. A19)